

## Virginia Department of Agriculture and Consumer Services

### **GUIDELINES FOR ENFORCEMENT OF THE VIRGINIA CODE RELATING TO MOTOR FUELS AND LUBRICATING OILS - CIVIL PENALTY ASSESSMENT DECISION MATRIX**

STATEMENT OF BASIS – STATUTORY AUTHORITY -- §§ 59.1-149 through 59.1-157, 59.1-163, and 59.1-165 through 59.1-167.1 OF THE CODE OF VIRGINIA (1950), AS AMENDED, Chapter 12 of Title 59.1 sections numbered 59.1-167.2 and 59.1-167.3 OF THE CODE OF VIRGINIA (1950), AS AMENDED.

STATEMENT OF PURPOSE -- This guideline provides direction to the Agency personnel in determining the amount of the penalty that shall be considered to be appropriate for various violations. It is designed to insure, to the extent practicable, that similar violations will be assessed generally comparable penalties in as uniform a manner as possible.

#### 1.1 Definitions.

The following words and terms, when used in these guidelines, shall have the following meanings, unless the context clearly indicates otherwise:

“Board” means the Board of Agriculture and Consumer Services.

“Previous violation” means any violation of any section of the Code of Virginia specified above, or regulations adopted pursuant thereto, cited within the three-year period preceding the current violation.

#### 1.2 Provision for Civil Penalties Generally.

Any person violating any section of the Code of Virginia, as specified above, or regulations adopted hereunder, may be assessed a civil penalty by the Board in an amount not to exceed \$1,000.

#### 1.3 Assessment of separate violations.

A. Each violation of any section of the Code of Virginia, as specified above, or regulations adopted pursuant thereto, shall be assessed separately for the purpose of determining the total civil penalty assessment.

B. In cases of continued violation, a civil penalty may be assessed separately for each day of violation beginning with the day of notification of the violations and ending with the date of abatement.

#### 1.4 Penalty Point System.

The point system described in this section shall be used to determine the amount of the civil penalty.

A. Type of Violation.

A person or firm in violation of any section of the Code of Virginia, as specified above, or regulations adopted pursuant thereto, shall be assigned up to 10 points for the type of violation described in one of the following categories:

| Points | Type of Violation  |
|--------|--|
| 2 - 4  | Sell, offer or expose for sale motor fuel not meeting minimum specifications   |
| 2 – 4  | Failure to register petroleum products as required by law or regulations   |
| 4 – 6  | Failure to retain records as required by law or regulation   |
| 4 – 6  | Failure to label dispensers as required  |
| 4 – 6  | Failure to provide documentation of deliveries as required by law or regulations   |
| 6 – 10 | Selling or attempting to sell motor fuels which do not meet the octane or cetane rating as specified on the dispenser                          |
| 7 – 10 | Dispose of petroleum products in a manner contrary to law or regulations   |
| 8 – 10 | Attempting to sell or selling non-complying gasoline in the control area during a control period   |
| 8 – 10 | Attempting to sell or selling defective motor fuel and lubrication oil prohibited from sale by the Commissioner                                |
| 8 – 10 | Selling or attempting to adulterate or attempting to sell adulterated motor fuel that does not meet the requirements of the law or regulations |
| 10     | Violate a stop sale, use, or removal order   |
| 10     | Interfere with the Commissioner or his duly authorized agents in the performance of duties   |
| 10     | Impersonate any federal, state, inspector or official  |

B. Seriousness of Violation.

A person or firm in violation of any section of the Code of Virginia, as specified above, or regulations adopted pursuant thereto, shall be assigned up to 10 points for the seriousness of the violation, taking into consideration any one of the following factors:

- (a) Potential monetary consequences.
- (b) Potential of impact to competitors.

- (c) Degree of inconvenience or deception to a buyer or prospective buyer.
- (d) Degree of disregard for the law.

Points Seriousness Category

- 1 – 3 Minor violations; those having minimal impact on the consumer or competitors
- 4 – 6 Moderate violations; those having a measurable impact on the consumer or competitors
- 7 – 10 Serious violation; those having an adverse impact on the consumer or competitors

C. Culpability.

A person or firm in violation of any section of the Code of Virginia, as specified above, or regulations adopted pursuant thereto, shall be assigned up to 6 points, from one of the following categories, based on the degree of fault of the person to whom the violation is attributed:

Points Culpability Category

- 0 No fault attributed; an inadvertent violation which was unavoidable by the exercise of reasonable care
- 1 – 2 Lack of knowledge; a violation which is the result of the individual being unaware of the statutory requirements
- 3 – 4 Negligent
- 5 – 6 Knowing; aware of actions

D. History of Previous Violations

In determining the amount of a civil penalty, the history of previous violations of the business or natural person shall be considered.

For current violations resulting from actions of a business, one point shall be assigned for each previous violation found that resulted from the actions of the business. Each physical business location shall be treated as a separate entity.

For current violations resulting from the actions of a natural person, one point shall be assigned for each previous violation found that is attributable to the same natural person cited in the current violation.

Previous violations overturned through the appeal process shall not be counted.

In instances where both the business and a natural person have been cited in the current case, and both have previous violations, points may be assigned for both.

D. Credit for good faith in attempting to achieve compliance.

The demonstrated good faith of the person or firm in attempting to achieve rapid compliance after notification of the violation shall be taken into consideration in determining penalty points. Up to four points shall be deducted from the total points assigned under Subsection A, B, C and D, based on the following categories:

| Points | Good Faith Credit Category   |
|--------|--|
| 3 – 4  | Immediate action taken to abate the violation, and correct any conditions resulting from the violation, in the shortest possible amount of time      |
| 1 – 2  | Prompt and diligent efforts made to abate the violation, and correct any conditions resulting from the violation, within a reasonable period of time |
| 0      | No points deducted   |

E. Determination of base civil penalty.

The total penalty point amount shall be determined by adding the points assigned under Subsections A, B, C and D, and subtracting from the subtotal the points assigned under Subsection E of this Section. The resulting total penalty point amount is converted to a dollar amount, according to the following schedule:

| Points | Dollars | Points | Dollars  |
|--------|---------|--------|----------|
| 1      | \$ 10   | 11     | \$ 150   |
| 2      | \$ 20   | 12     | \$ 200   |
| 3      | \$ 30   | 13     | \$ 250   |
| 4      | \$ 40   | 14     | \$ 300   |
| 5      | \$ 50   | 15     | \$ 400   |
| 6      | \$ 60   | 16     | \$ 500   |
| 7      | \$ 70   | 17     | \$ 625   |
| 8      | \$ 80   | 18     | \$ 750   |
| 9      | \$ 90   | 19     | \$ 875   |
| 10     | \$ 100  | 20     | \$ 1,000 |

F. Consideration of previous violations; reduction of penalty.

All previous violations of a person or firm shall be taken into consideration in determining the base civil penalty. In the case of a less than serious

violation where no previous violation exists, the base civil penalty may be reduced by 20 percent. In the case of a serious violation or a repeat violation the base civil penalty shall not be reduced.

1.5 Waiver of Use of Formula to Determine Civil Penalty.

- A. The Virginia Board of Agriculture and Consumer Services may waive the use of the formula contained in Section 1.4 to set the civil penalty, if the Board determines that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust. The basis for every waiver shall be fully explained and documented in the records of the case.
- B. If the board waives the use of the formula, it shall give a full written explanation of the basis for any penalty assessment to the person or firm found in violation.